



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 11, 1995

Mr. Kevin W. Kapitan
Assistant City Attorney
Fort Worth Police Department
350 West Belknap, Room 204J
Fort Worth, Texas 76102

OR95-934

Dear Mr. Kapitan:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 34304.

The City of Fort Worth (the "city") has received a request for information concerning a crime report and the subsequent investigation conducted by the Fort Worth Police Department (the "department"). The requestor specifically asks for "[a] complete copy of all documentation which pertains to the referenced crime report and investigation of that incident." The city asserts that although the investigation is now closed, portions of the requested information are excepted from required public disclosure under sections 552.101, 552.102, 552.103, and 552.108 of the act. The city is specifically concerned with the release of the following items:

- 1 Defendant mugshots;
2. Photo lineups including the Defendant;
3. Police reports provided by agencies outside of Texas; and
4. Criminal history and NCIC information.

You do not explain why section 552.102 and 552.103 apply to the requested information. If a governing body does not establish how and why an exception applies to requested information, this office has no basis on which to pronounce it protected. See Open Records Decision No. 363 (1963). Thus, the city may not withhold the requested information pursuant to sections 552.102 and 552.103.

We first consider your assertion that the mugshots of the defendant, and the photo lineup are excepted from required public disclosure by section 552.101 of the act. Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Information must be withheld from required public disclosure under section 552.101 in conjunction with common-law privacy if it meets the criteria the Texas Supreme court articulated for section 552.101 in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under *Industrial Foundation*, a governmental body must withhold information on common-law privacy grounds only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Id.* at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. article 6252-17a, section 3(a)(1)). Mugshots do not ordinarily implicate an individual's privacy interest unless a situation exists in which the mugshot might be erroneous or misleading or damage the reputation of an innocent person. *See* Open Records Decision No. 616 (1993). In this particular instance, as we have no reason to conclude that the mug shot and photo lineup might be erroneous, misleading, or damaging to the reputation of an innocent person, we conclude that the mugshot and photo lineup do not contain information that satisfies the test set forth in *Industrial Foundation*. Therefore you may not withhold them from required public disclosure under section 552.101 of the act.

Section 552.108 of the Government Code, sometimes referred to as the law enforcement exception, provides as follows:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

Section 552.108 excepts from required public disclosure information related to inactive or closed cases only when its release would unduly interfere with law enforcement or prosecution. Open Records Decision Nos. 616 (1993) at 1, 611 (1992). Thus a mug shot taken in connection with an arrest when the arrestee was subsequently convicted of the offense for which he or she was arrested and is currently serving time is not protected by section 552.108 unless the law-enforcement agency demonstrates that its release would unduly interfere with law enforcement. Open Records Decision No. 616 (1993) (construing statutory predecessor to § 552.108). You have not indicated how release of these items would unduly interfere with law enforcement procedures; thus, we conclude that the mugshots and photo lineups are not excepted from required public disclosure under section 552.108 of the act.

We now turn to your assertion that the criminal history information obtained from the NCIC and TCIC is excepted from required public disclosure pursuant to sections 552.108 and 552.101. Federal law imposes limitations on the dissemination of criminal history information obtained from the NCIC and TCIC. Federal law requires each state to observe its own laws regarding dissemination of criminal history information it generates, but requires a state to maintain as confidential any information from other states or the federal government that the state obtains by access to the Interstate Identification Index, a component of the NCIC. *See Open Records Decision No. 565 (1990) at 10-12; see also Gov't Code ch. 411 (state statute restricting the release of TCIC information obtained from the Texas Department of Public Safety).* The criminal history information received through the Interstate Identification Index is excepted from required public disclosure in its entirety.

You also assert that section 552.108 excepts criminal history information obtained from the Englewood, Colorado Police Department from required public disclosure. You have not shown how the release of such information would unduly interfere with law enforcement or prosecution. Further, you have not demonstrated that the Englewood Police Department has a law enforcement interest in withholding such information. Therefore, we conclude that this information must be disclosed pursuant to the provisions of the act.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have any questions about this ruling, please contact our office .

Yours very truly,



Toya Cirica Cook
Assistant Attorney General
Open Records Division

TCC/KHG/rho

Ref: ID# 34304

Enclosures: Submitted documents

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(w/o enclosures)